DESCENT AND DISTRIBUTION—WHAT LAW GOVERNS—Under the Kentucky statute, providing that in the absence of a will the estate of a non-resident, situated in that state, should "be distributed and disposed of according to the laws of the state of which he was an inhabitant," a surviving husband takes the whole of the estate of his wife, under the common law in force in New Jersey where the parties were domiciled. *Lee* v. *Belknap* (Ky. 1915), 173 S. W. 1129.

This decision is in direct conflict with *Locke* v. *McPherson,* 163 Mo. 493, 63 S. W. 726, 52 L. R. A. 420, 85 Am. St. Rep. 546, where the court held that the property should be distributed under the Missouri statute, even though the parties were residents of New York, and Missouri had a statute virtually the same as that of Kentucky. The court takes the view that since the common law is in force in New York as to descent and distribution between husband and wife there was no law in New York within the meaning of the Missouri statute. They say that in using the word "law" the legislature referred to some statute of descent and distribution in another state and that since, by the common law, the husband took all the personal property of the wife upon marriage, although by the New York statute she was given control of it during her life, there was no law in force in New York on descent and distribution as between husband and wife. This decision of the Missouri court has not gone without criticism—see Note 29 L. R. A. N. S. 781—and it would seem that the principal case is the correct view. As is said in this opinion, on page 1138, "it (law as used in the statute) means the law in force in that state, whether it be common law, or statute law, or by whatever name it may be called." No valid reason is perceived why the effect of the statute should be limited to the declaration of the legislature of another state, if the policy of that state is to let the common law stand.

EQUITY—SPECIFIC PERFORMANCE OF SALE OF CORPORATE STOCK.—Plaintiff filed a bill praying specific performance of a contract for the sale of corporate stock to defendant, alleging that the stock was not procurable in the market and that its value was not readily ascertainable. The lower court dismissed the bill for want of equity jurisdiction. In reversing this decree, *held* that although as a general rule the parties are left to their legal remedy for a breach of a contract for the sale of chattels, yet there are many exceptions, and property not procurable in the market and having an uncertain value is within the exception, the legal remedy in such a case being inadequate. *Morgan* v. *Bartlett,* (W. Va. 1915). 83 S. E. 1001.

The rule laid down above is entirely in accord with the more recent decisions. Among the many cases in accord are, *Newton* v. *Wooley,* 105 Fed. 541; *Hills* v. *McCunn,* 232 Ill. 488; *Schmidt* v. *Pritchard,* 135 Iowa 240; *Baumhoff* v. *Railroad,* 205 Mo. 262; *N. Cent. Ry.* v. *Walworth,* 193 Pa. 214; and *Leach* v. *Fobes,* 77 Mass. 506. It must clearly appear, however, that the shares are not obtainable in the market, or that their value is not ascertainable, else the remedy will not be granted. *Northern Trust Co.* v. *Markell,* 61 Minn. 271; *Rigg* v. *Ry.* 191 Pa. 305; *Moulton* v. *Warren Mfg. Co.,* 81 Minn. 259. And specific performance will not be granted where plaintiff's only claim is that he

should be re-imbursed for money expended for stock. *Johnson* v. *Stratton,* 109 Ill. App. 481. Nor does the mere fact that the stock is not listed and sold, or offered for sale, so that its market value is difficult to ascertain warrant a decree of specific performance, where the value can be otherwise ascertained and the damage established. *Ehrich* v. *Grant,* 97 N. Y. Supp. 100. But in some states specific performance will be granted where it appears that the stock is of peculiar value to the plaintiff in order that he may obtain proper and legitimate control of a corporation. *O'Neill* v. *Webb,* 78 Mo. App. 1; *Sherman* v. *Herr,* 220 Pa. St. 420; *Schmidt* v. *Pritchard,* 135 Iowa 240; *Sherwood* v. *Wallis,* 1 Cal. App. 532. A few states deny the remedy on this ground *Ryan* v. *McLane,* 91 Md. 175; *Cowles* v. *Miller,* 74 Conn. 287; *McLaughlin* v. *Leonhardt,* 113 Md. 261. Where the defendant is financially irresponsible specific performance of a contract for sale of stock will be decreed. *Rau* v. *Seidenberg,* 105 N. Y. Supp. 798. But in this, as in all cases of this kind, the question of whether a court of equity will take jurisdiction and grant specific performance is a matter resting in the sound discretion of the court and cannot be demanded as a matter of right. *Butler* v. *Wright,* 93 N. Y. Supp. 113; *Cowles* v. *Miller,* 74 Conn. 287; *McLaughlin* v. *Leonhardt,* 113 Md. 261; *Newton* v. *Wooley,* 105 Fed. 541.

EQUITY—TRADE-MARKS—UNFAIR COMPETITION.—Crutcher and Starks, as a partnership, and later as a corporation, had been in the clothing business for 28 years under the active management and control of the Stark brothers, who subsequently retired from the corporation. Parties, none of whom were named Starks, organized the Starks Company, which engaged in the same business, on the same street, and only two blocks away. Persons had been deceived by the similarity of names. In the suit to enjoin the defendant corporation from using the name of Starks, *held*: That the use of such name was unfair competition, which is "the passing off or attempted passing off upon the public of the goods or business of one man as those of another, and which embraces any conduct tending to produce this effect, regardless of the means employed", and would be enjoined. *Crutcher & Starks* v. *Starks* (Ky. 1914) 171 S. W. 433.

At first sight this case would seem to be an extreme one, but an examination of the decisions would indicate that it is in accord with the weight of authority. Each case must necessarily depend to a large extent upon its own facts, for as was well said in *Ball* v. *Best,* 135 Fed. 435, "It is not a light thing to restrain a man from the full benefit of his name nor would a court of equity consider such a course in any case even now, in the absence of fraud or actual damage." A few cases in accord with the principal case go upon the principle that a man may acquire a property right in a trade-name which a court of equity will protect. *Wormser* v. *Shayne,* 111 Ill. App. 556; *Finney's Orchestra* v. *Finney's Famous Orchestra,* 126 N. W. 198 (Mich.); *Christy* v. *Murphy,* 12 How. Pr. (N. Y.) 77. But the better theory and the one most generally adopted is expressed in a leading English case as follows: "The principle upon which the cases on this subject proceed is, not that there is any property in the word, but that it is a fraud on a person who has